

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.254 OF 2005

Vilas Yadu Vairat ...Applicant
VS.
State of Maharashtra ...Respondent

Mr.Rajan Salvi for the Applicant
Ms S.D.Shinde,A.P.P. for State

CORAM: A.S.OKA, J.

DATE OF THE HEARING LAST ARGUMENTS: OCTOBER 6, 2005

DATE OF PRONOUNCEMENT OF JUDGMENT : DECEMBER 5, 2005

JUDGMENT:

1. This application has been received through jail where the prayer is that the sentences awarded against the Applicant be ordered to run concurrently. The Application has been filed by the Applicant through jail. I have heard the Shri Rajan Salvi, Advocate appointed as amicus curie to espouse the cause of the Applicant. I have also heard the learned A.P.P. for State.

2. The Applicant has been convicted for various offences. The details of the conviction which are on record are as under:

i) The Judgment and order dated 20th October 2000 passed by the learned Judicial Magistrate First Class, Cantonment Court, Pune in Regular Criminal Case No.109 of 2000 by which the Applicant was convicted for

offences under Section 454 read with Section 34 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for one year. By the same Judgment and order the Applicant was convicted for offence under Section 380 read with Section 34 of I.P.C. and was sentenced to suffer rigorous imprisonment for one year. Under the same Judgment a direction is given that the aforesaid sentences and the sentences passed in Regular Criminal case Nos.161/2000, 106/2000, 169/2000, 168/2000, 170/2000, 171/2000 and 159/2000 shall run concurrently.

ii) Regular Criminal Case no.94 of 1999 decided by the learned Judicial Magistrate First Class, Court No.8, Pune on 14th May 2002 by which the Applicant was convicted under Section 379 of the I.P.C. and was sentenced to suffer rigorous imprisonment for 18 months.

iii) Regular Criminal case no.139 of 1998 decided by the learned J.M.F.C., Court No.8, Pune by Judgment and Order dated 1st August 2002 by

which the Applicant was convicted under Section 457 of the I.P.C. and was sentenced to suffer rigorous imprisonment for two years. By the said order the Applicant was also convicted for offence under Section 380 of the I.P.C. and was directed to suffer rigorous imprisonment for two years. Both the punishments were directed to run concurrently.

- iv) Regular Criminal case No.140 of 2000 decided by the learned Judicial Magistrate First Class, Court No.8, Pune on 12th December 2002 by which the Applicant was convicted for offence under Section 454 read with Section 34 of the I.P.C. and was sentenced to suffer rigorous imprisonment for two years. By the same Judgment and order, the Applicant was convicted for offences punishable under Sections 457 and 380 of the I.P.C. and was sentenced to suffer rigorous imprisonment for three years each under both the sections. By the said Judgment all the three sentences were directed to run concurrently.

- v) Regular Criminal case No.11/2003 decided by the learned Chief Judicial Magistrate, Pune on 25th June 2003 by which the Applicant was convicted for offences under Sections 454, 457, 380 read with Sections 34 and 75 of I.P.C. and was sentenced to suffer rigorous imprisonment for three years on each count the sentences were ordered to be run concurrently.

- vi) By common Judgment and Order dated 25th June 2003 in Regular Criminal Case Nos.12,13 and 14 of 2003 the Applicant was convicted in all three cases for offences under Sections 454, 457, 380 read with Sections 34 and 75 of I.P.C. and was sentenced to suffer rigorous imprisonment for three years on each count in each case. Substantive sentences in all the three cases were ordered to be run concurrently.

3. The prayer in the application seems to be that the sentences in aforesaid cases should be directed to run concurrently.

4. The relevant provision of the Code of Criminal Procedure, 1973 is Section 427 which reads thus :

"427.Sentence on offender already sentenced for

another offences - (1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:

. Provided that where a person who has been sentenced to imprisonment by an order under section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence

of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.

Another provision which is relevant is Section 428 which reads thus :

"428.Period of detention undergone by the accused to be set off against the sentence of imprisonment - Where an accused person has, on conviction, been sentenced to imprisonment for a term [not being imprisonment in default of payment of fine] the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him."

5. The learned Advocate for the Applicant has submitted a

chart giving details of the sentences awarded in different cases, period from which the Applicant was undertrial prisoner, the total period from investigation to trial and the set off to which the Applicant is entitled to Section 427 and 428 of the Code of Criminal Procedure, 1973. The learned A.P.P. was granted time to verify the correctness of the chart. The learned A.P.P. on instructions stated that the said chart except column No.6 thereof is factually correct. Accordingly, I have taken the said chart on record and marked 'X' for identification. The learned Advocate for the Applicant submitted that if the details of the chart are correct and full benefit is granted to the Applicant, he will have to be released forthwith. The learned A.P.P. opposed the application by submitting that power under section 427 cannot be invoked as the conviction of the Applicant is under different trials in connection with the different offences. The learned A.P.P. submitted that even under Section 428 of the said Code, benefit cannot be granted to the Applicant of the period spent in jail as an undertrial prisoner in one particular case against sentence in another case. The learned A.P.P. therefore submitted that there is no merit in the Application and the same deserves to be rejected.

6. I have considered the submissions. The learned Advocate for the Applicant tried to draw support from the decision of the Apex Court in 2000 Cr.L.J. page 4662 (S.C.) (Ammavasai

Vs. Inspector of Police). By the said decision, the Apex Court directed that all sentences shall run concurrently in peculiar facts of the case where the Appellant was sentenced to undergo imprisonment in different offences for a total period of 35 years. This Judgment does not lay down as a proposition of law that in case of conviction of accused in different trials for different offences, the High Court has a power to direct that sentences to run concurrently. As is clear from the details given earlier, conviction of the Applicant is in different cases. Wherever separate punishments are imposed against the Applicant for different offences in the same case, benefit is already granted for running the sentences concurrently. In my view, no case is made out for granting benefit under Section 427 of the said Code to the Applicant.

7. In so far as relief under Section 428 of the said Code is concerned, reference will have to be made to the decision of the Apex Court reported in A.I.R. 2001 SC. page 2255 (State of Maharashtra and another vs. Najakat @ Mubarak Ali). The Apex Court in paragraph Nos.15 and 16 of the said decision held thus :

"15. The purpose is therefore clear that the convicted person is given the right to reckon the period of his sentence of

imprisonment from the date he was in jail as an under-trial prisoner. In other words, the period of his being in jail as an under-trial prisoner would be added as a part of the period of imprisonment to which he is sentenced. We may now decipher the two requisites postulated in Section 428 of the Code.

- . (1) During the stage of investigation, inquiry or trial of a particular case the prisoner should have been in jail at least for a certain period.
 - . (2) He should have been sentenced to a term of imprisonment in that case.
16. If the above two conditions are satisfied then the operative part of the provision comes into play i.e. if the sentence of imprisonment awarded is longer than the period of detention undergone by him during the stages of investigation, inquiry or trial, the convicted person need undergo only the balance period of imprisonment after deducting the earlier period from the

total period of imprisonment awarded. The word "if any" in the section amplifies that if there is no balance period left after such deduction the convict will be entitled to be set free from jail, unless he is required in any other case. In other words, if the convict was in prison, for whatever reason, during the stages of investigation, inquiry or trial of a particular case and was later convicted and sentenced to any term of imprisonment in that case the earlier period of detention undergone by him should be counted as part of the sentence imposed on him."

Therefore, the Applicant is entitled to benefit of Section 428 in the light of the law laid down by the Apex Court in the said case of State of Maharashtra (supra). In all cases except in R.C.C.No.11 of 2003 benefit under Section 428 has been given to the Applicant.

8. Hence, this application is disposed of by directing that benefit available under Section 428 of the said Code shall be made available by the State to the Applicant in case of his sentence in R.C.C.No.11 of 2003 decided on 25th June 2003 by the Chief Judicial Magistrate by reckoning the period of his

sentence of imprisonment in the case from the date on which he was in jail in the said case as an undertrial prisoner. The prayer for directing that sentences awarded in all the offences shall run concurrently is rejected.

(ABHAY S.OKA, J.)